

REMARKS

1. Specification and Drawings

Certain objections were made to the specification and drawings because of inconsistencies in referring to reference signs. Amendments have been made to the specification that obviate these objections.

2. Claims

Claims 1 – 12 have been examined, and stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Pat. No. 5,435,282 (“Haber”). The rejections are respectfully traversed. Certain objections made to the claims in the Office Action have been addressed as requested, and a typographical error in Claim 9 has been corrected.

The only independent claim, Claim 1, requires “removing and replacing the reservoir.” In rejecting the claims over Haber, the Office Action has identified certain components of the nebulizer described therein, including identifying fluid delivery chamber 32 as corresponding to the reservoir recited in the claims. For a claim to be anticipated by a reference, all of the elements must be taught or suggested by the reference. But there is no teaching or suggestion of removing and replacing the reservoir in Haber.

For this limitation, the Office Action points to Fig. 2 of Haber, noting that “the reservoir 32 could be replaced by removing of mouthpiece 2, emitter base 4 and emitter plate 16 respectively” (Office Action, ¶6). Fig. 2 is nothing more than an exploded view of the nebulizer to show its component parts. Neither it nor anything else in Haber teaches or suggests removal of the emitter base and emitter plate, which the Office Action suggests as a mechanism to remove the fluid delivery chamber 32. Such removal would effectively amount to disassembling the nebulizer, which is not a function that a user would normally perform according to the teachings of Haber. In this respect, there is a notable contrast between Haber’s discussion of

how its mouthpiece may be attached to be replaceable (Haber, Col. 3, ll. 12 – 14) and the more permanent way in which the emitter base and emitter plate are mounted with holding posts 12 (*id.*, Col. 3, ll. 28 – 41). The nebulizer of Haber is clearly not designed for removal and replacement of the fluid delivery chamber 32.

Furthermore, the mere fact that it is possible to disassemble the nebulizer to remove the fluid delivery chamber 32 is insufficient to render the claim limitation inherent. Inherency requires that the characteristic necessarily flow from the teachings of the prior art. *See* MPEP 2112. “The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” MPEP 2112 (emphasis in original).

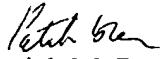
Since Haber neither expressly nor inherently discloses the claim limitation of removing and replacing the reservoir, it is believed that all claims are patentable.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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